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May 9, 2016

VIA EFILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: WHEMCO-Steel Castings, Inc. v. Duquesne Light Company
Docket No. C-2014-2459527

Dear Secretary Chiavetta:

On behalf of WHEMCO-Steel Castings, Inc., I have enclosed for electronic filing the Answer of WHEMCO-Steel Castings, Inc. to Motion for *In Camera* Review by Duquesne Light Company, in the above-captioned proceeding.

This document has been served as indicated in the attached Certificate of Service.

Sincerely,



Alan M. Seltzer

AMS/tlg
Enclosure
cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WHEMCO-STEEL CASTINGS, INC.	:	
	:	
v.	:	DOCKET NO. C-2014-2459527
	:	
DUQUESNE LIGHT COMPANY	:	

**ANSWER OF WHEMCO-STEEL CASTINGS, INC. TO MOTION FOR *IN CAMERA*
REVIEW BY DUQUESNE LIGHT COMPANY**

WHEMCO-Steel Castings, Inc. (“Whemco”) hereby answers the Motion For *In Camera* Review (“Duquesne Motion”) filed by Duquesne Light Company (“Duquesne”) on April 27, 2016, pursuant to the Pennsylvania Public Utility Commission (“Commission”) regulations at 52 Pa. Code § 5.103(c) as follows:

I. BACKGROUND AND DISCUSSION

1. The Duquesne Motion and this Answer have their genesis in Duquesne’s continuing efforts to ascertain the complete details of the text of an email dated January 6, 2011 (“January 2011 Email”) from Pamela Polacek, Esq. to Christian Slingluff, an employee at her then client Whemco.

2. Whemco has continuously asserted that portions of the January 2011 Email contain material that is subject to the attorney client and attorney work product doctrines and cannot be provided to Duquesne. Toward that end, Whemco included the January 2011 Email in the privilege log submitted previously to Duquesne in Whemco’s response to Duquesne Interrogatories Set IV-12 (Duquesne Motion, ¶¶ 18-19).

3. The January 2011 Email was the subject of a previous discovery ruling by the presiding Administrative Law Judge (“ALJ”). In the *Interim Order* dated April 5, 2016, the ALJ addressed portions of Duquesne’s Sets IV and V Interrogatories to Whemco (“Interim Order”).

4. The Interim Order not only accurately characterized the nature of the dispute between Duquesne and Whemco, but the reasons why Whemco claims the January 2011 Email is subject to protection under the attorney client privilege and attorney work product doctrine:

According to Whemco, this email contains analyses from Pamela Polacek, Esq. performed during her representation of Whemco in its efforts to develop a contract under Rule 4 of Duquesne's tariff to ameliorate the impacts of the Rider No. 5 discount applicable to Rate L customer being eliminated by Duquesne effective January 1, 2011 and provided to Whemco's representative, Christian Slingluff, as her client. This confidential and privileged email updated and analyzed information that had previously been provided to Whemco by Duquesne's then account representative to Whemco, Kim Titley (who is referenced in the email), as part of the Rule 4 discussions.

(Interim Order, p. 5).

5. As the Duquesne Motion correctly points out, on April 13, 2016 Whemco provided Duquesne a Supplemental Response to Duquesne Interrogatory Set IV-12, which included a redacted version of the January 2011 Email. (Duquesne Motion, ¶ 22).

6. The January 2011 Email was also the subject of Duquesne discovery in connection with Duquesne Interrogatory Set VII-2. In Whemco's April 4, 2016 response to Set VII-2, which is attached hereto as Exhibit A, among other things, Whemco reiterated that (i) the January 2011 Email was related to Rule 4 negotiations between Duquesne and Whemco that occurred at a time when Ms. Polacek was legal counsel to Whemco and (ii) that if Duquesne was not satisfied with the redacted version of the January 2011 Email, Whemco would provide it to the ALJ for an *in camera* review to allow evaluation of Whemco's privilege claims.

7. In light of Whemco's previously expressed voluntary willingness to make the January 2011 Email available for an *in camera* review by the ALJ, the Interim Order noted that upon motion by Duquesne that Whemco has "improperly redacted discoverable information", the ALJ would "consider" *in camera* review. (Interim Order, p. 8).

8. Duquesne has not claimed in the Duquesne Motion that Whemco improperly redacted discoverable information in connection with the January 2011 Email. Rather, Duquesne states that, based on its review of the redacted version of the January 2011 Email, it cannot discern what subjects were discussed in the redacted portions. (Duquesne Motion, ¶ 22). Although Duquesne has not technically satisfied the requirements for an *in camera* review specified in the Interim Order, Whemco does not object to the ALJ conducting such review to confirm Whemco's privilege claims.

9. Whemco's willingness to allow an *in camera* review by the ALJ of the January 2011 Email is not – and shall not be construed as – a waiver of (i) the attorney client privilege and attorney work doctrine with respect to this email or (ii) any further rights Whemco has in law, equity or otherwise to continue to protect the confidentiality of properly and lawfully privileged material in the January 2011 Email.

II. CONCLUSION

10. Subject to the statements and representations stated above, Whemco has no objection to the ALJ conducting an *in camera* review of the January 2011 Email to verify Whemco's privilege claims.

WHEREFORE, Whemco respectfully requests that the ALJ grant Whemco (i) the relief requested in this Answer in accordance with and subject to the terms and conditions specified above and (ii) such other relief as is just and reasonable under the circumstances.

Respectfully submitted,

Dated: May 9, 2016



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Attorneys for WHEMCO-Steel Castings, Inc.

Exhibit A

Docket No. C-2014-2459527
Respondent: Pamela Polacek, Esquire
Position: Attorney, McNeese Wallace &
Nurick LLC

WHEMCO-Steel Castings, Inc.
Response to Duquesne Light Company
Interrogatories and Requests for Production
of Documents, Set VII – 2

No. 2 - Re Attachment to Duquesne Light Set IV-12: Did the e-mail correspondence dated 1/6/2011 advise Whemco about the settlement rates (or potential settlement rates) in Duquesne Light's 2010 base rate case?

- a. If no, what distribution rates were discussed?
- b. If yes, did Whemco object to the settlement rates?
- c. If Whemco objected, fully explain how Whemco objected and what actions were taken, if any.
- d. If Whemco objected, provide a copy of all correspondence related to such objection.

Response:

Whemco previously identified the referenced email dated 1/6/2011 as subject to the Attorney-Client Privilege and Attorney-Work Product Doctrine as noted on the Privilege Log submitted in the response to Duquesne Set IV-12. The email dated 1/6/2011 is privileged since it was issued by Ms. Polacek to her client during the course of legal representation of Whemco in connection with its efforts to negotiate a Rule 4 contract with Duquesne or other measure to ameliorate the substantial cost increase Whemco incurred in its electric distribution rates resulting from the loss of the Rider No. 5 discount applicable to Rate L customers like Whemco effective January 1, 2011. The email correspondence dated 1/6/2011 updated and analyzed information previously provided to Whemco by the Duquesne account representative referenced in the email, Kim Titley, as part of the Rule 4 contract discussions. If Duquesne continues to challenge any aspect of Whemco's privilege claims with respect to the subject email, Whemco is prepared to provide this response and the subject email to the presiding ALJ for an *in camera* review to confirm Whemco's claims.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WHEMCO-STEEL CASTINGS, INC.

v.

DUQUESNE LIGHT COMPANY

:
:
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:
:

DOCKET NO. C-2014-2459527

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the Answer of WHEMCO-Steel Castings, Inc. to Motion for *In Camera* Review by Duquesne Light Company upon the parties and in the manner listed below:

Via Email and First-Class Mail

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Dated this 9th day of May, 2016.



Alan M. Seltzer, Esq.